

AO 241 (Rev. 09/17)

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District: <u>EASTERN</u>
Name (under which you were convicted): <u>CARLOS HAIRSTON</u>		Docket or Case No.:
Place of Confinement : <u>SCI Forest</u>	Prisoner No.: <u>Q14751</u>	
Petitioner (include the name under which you were convicted) <u>Carlos Hairston</u>		Respondent (authorized person having custody of petitioner) v. <u>Superintendent SCI Forest</u> <u>Chester County District Attorney</u>
The Attorney General of the State of: <u>Pennsylvania</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

CHESTER COUNTY COURTHOUSE
201 W. Market Street, Suite 1400 P.O. Box 2746
Westchester, PA 19380-0989

(b) Criminal docket or case number (if you know): CP-15-CR-4377-2019 / CR-4471-2019

2. (a) Date of the judgment of conviction (if you know): November 16, 2020

(b) Date of sentencing: November 16, 2020

3. Length of sentence: 8 to 16 years

4. In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

Two (2) counts of Burglary
one (1) count of Persons not to possess firearms

6. (a) What was your plea? (Check one)

☐ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☒ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

Plead guilty to (3) Three Counts
plea deal

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Superior Court of Pennsylvania

(b) Docket or case number (if you know): 758 EDA 2022 / 759 EDA 2022

(c) Result: Affirmed

(d) Date of result (if you know): October 25, 2022

(e) Citation to the case (if you know): _____

(f) Grounds raised: (1) Plea Court imposed a mandatory minimum for
Persons not to Possess firearms in violation of Alleyne v. United
States 570 (2013) (2) Plea Counsel was ineffective for not asserting
that Hairston's persons not to Possess firearms sentence was illegal;
and (3) Hairston's Plea was involuntary and Unknowing because
he did not receive Pretrial notice of Prosecution's intent to seek
a mandatory sentence for his Conviction of firearms Possession.

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

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(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

_____(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Chester County Court of Common Pleas(2) Docket or case number (if you know): CR-4377-2019 / CR-4471-2019

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: PCRA(5) Grounds raised: ① sentence is illegal pursuant to Appellate andAppellate mandates. / ② Counsel is ineffective for Failure to object
to illegal mandatory minimum sentence. / ③ Commonwealth failed
to give notice of intent to pursue mandatory minimum
for Firearm possession making the guilty Plea involuntary
and Unknowingly given.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No(7) Result: Relief denied

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(8) Date of result (if you know): February 17, 2022

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☒ No(2) Second petition: ☐ Yes ☐ No(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

*I have filed an appeal to Superior Court after denial of
PCRA now I'm appeal to Federal Court, raising Constitutional violations.*

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: *The Plea Court imposed a mandatory minimum sentence
for persons not to possess firearms in violation of *Alayne v. United States*, 570 (2013)*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

*The enhanced firearm possession penalty was based on Judge
found facts which were not actual facts found by a jury and
proven beyond a reasonable doubt mandated by Supreme Court
decisions Sixth Amendment guarantees.*

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

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(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRAName and location of the court where the motion or petition was filed: Chester County CourtDocket or case number (if you know): 4377, 2019 / 4471-2019Date of the court's decision: ~~October 25, 2022~~ February 17, 2022Result (attach a copy of the court's opinion or order, if available): denied

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court of PennsylvaniaDocket or case number (if you know): 758 EDA 2022 / 759 EDA 2022Date of the court's decision: October 25, 2022Result (attach a copy of the court's opinion or order, if available): affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO:

Plea Counsel was ineffective for not asserting that Hairston's persons not to possess firearms sentence was illegal

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Plea Counsel should have been aware of the Unconstitutional Sentence Statute being used to impose a mandatory minimum sentence against the Defendant therefore, objecting to the illegal sentencing statute because of Supreme Court rulings in Alleyne and Apprendi. Defendant must be informed and understand the nature of the charges and must understand the consequences of his plea to an illegal and unconstitutional sentence, Defendant cannot be said to have been fully apprised. A significant increase in sentence is not required to establish prejudice, as any amount of jail time has Sixth Amendment significance.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes

☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

PCRA

Name and location of the court where the motion or petition was filed:

Chester County Court

Docket or case number (if you know): _____

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Date of the court's decision: February 17, 2022
 Result (attach a copy of the court's opinion or order, if available): denied

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court of Pennsylvania

Docket or case number (if you know): 758 EDA 2022 / 759 EDA 2022

Date of the court's decision: October 25, 2022

Result (attach a copy of the court's opinion or order, if available): affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

GROUND THREE: Hairston's Plea was involuntary and Unknowing because he did not receive Pretrial notice of the Prosecution's intent to impose mandatory minimum.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant's now - unconstitutional sentence in light of his Plea-agreement as, doing so would result in a miscarriage of Justice by Sustaining what has Proven to be an unlawful application of the Punishment. The erroneous sentence affected every aspect of the Proceeding beginning with the charging decision to the ultimate sentence pronounced by the court, and waiver is not enforceable.

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(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

_____(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes☐ No(2) If you did not raise this issue in your direct appeal, explain why: _____

_____(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRAName and location of the court where the motion or petition was filed: Chester County CourtDocket or case number (if you know): 4377-2019 / 4471-2019Date of the court's decision: February 17, 2022Result (attach a copy of the court's opinion or order, if available): denied

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Courts of PennsylvaniaDocket or case number (if you know): 758 EDA 2022 / 759 EDA 2022Date of the court's decision: October 25, 2022Result (attach a copy of the court's opinion or order, if available): affirmed

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: C. Curtis Nordin esq.

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☐ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

Petitioner Timely filed a Lower Court Post Conviction Relief Act Petition (PCRA) in 2021 which was denied on February 17, 2022. Petitioner filed a Timely Superior Court appeal NO. 758 EDA-2022, 759 EDA-2022 which was affirmed on October 25, 2022. Now the Petitioner files this Timely Federal Habeas Corpus Petition after Superior Courts decision to

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TO affirm PCNA court's order.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Vacate and Remand

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on 11/24/2022 (date).

Cain H. da

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

VERIFICATION

I do Verify that the facts set forth in the enclosed Document(s) are true and Correct to the best of my knowledge.

by: Carla H. Hester

CERTIFICATION OF SERVICE

I do hereby Certify that on the below listed date, I have served upon the below listed Person(s) a copy of the enclosed documents(s).

by: Carla H. Hester

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provision of the Public Access Policy of the Unified Judicial System of Pennsylvania: case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

by: CARLOS HARRISTON

Signature: Carla Hester

Date: 11/24/2022

CC: File

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Marietta, PA 16239

INMATE
MAIL

neopost
12/07/2022
FIRST-CLASS MAIL
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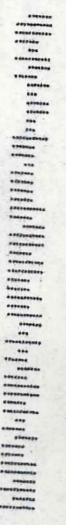
Smart Communications / PA DOC
Inmate Name CHILDS THAKSTON DC # Q1-4751
SCI Forest
PO Box 33028
St Petersburg, FL 33733



EASTERN DISTRICT OF PENNSYLVANIA
Office of:
U.S.M.S. Clerk UNITED STATES DISTRICT COURT
X-RAY PHILADELPHIA, PA. 19106-9865

Inmate Mail Dept. of Corrections

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